TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 226.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PETITIONER,

vs.

THE WEST COAST NAVAL STORES COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JULY 8, 1909.

(18,000)

(19,300.)

SUPREME COURT OF THE UNITED STATES.

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a *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

THE LOUISVILLE & NASHVILLE RAILROAD CO., Plaintiff in Error,
versus
THE WEST COAST NAVAL STORES COMPANY, Defendant in Error. } No. 1323.

Error to the circuit court of the United States for the northern district of Florida.

(Original record filed January 11, 1904.)

U. S. circuit court of appeals. Filed Jan. 27, 1904. Charles H. Lednum, clerk.

1 In the Circuit Court of the United States for the Fifth Judicial Circuit, Northern District of Florida.

WEST COAST NAVAL STORES COMPANY, a Citizen of the State of Florida, and Incorporated by the Laws of said State, and Having Its Principal Place of Business Therein,
versus
THE LOUISVILLE & NASHVILLE RAILROAD Company, a Citizen of the State of Kentucky, a Corporation Organized and Constituted by That Name by the Laws of the State of Kentucky. } Damages, $25,000.00.

Be it remembered that, on the thirtieth day of August, in the year of our Lord one thousand nine hundred, came the said West Coast Naval Stores Company, a citizen of the State of Florida, by its attorney, John C. Avery, and filed in the clerk's office of the circuit court aforesaid, its præcipe for the issuance of *summons ad respondendum* to the said defendant, The Louisville & Nashville Railroad Company, which præcipe is in the words and figures following, to wit:

In the Circuit Court of the United States for the Fifth Judicial Circuit, Northern District of Florida.

WEST COAST NAVAL STORES COMPANY, a Citizen of the State of Florida, and Incorporated by the Laws of said State, and Having Its Principal Place of Business Therein,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD Company, a Citizen of the State of Kentucky, a Corporation Organized and Constituted by That Name by the Laws of the State of Kentucky.
} Damages, $25,000.00.

The clerk of said court will please issue a *summons ad respondendum* to the defendant in the above entitled case, and make
2 the same returnable to the rule day of October, A. D. 1900.

JOHN C. AVERY,
Attorney for Plaintiff.

(Indorsed:) West Coast Naval Stores Co. *vs.* L. & N. R. R. Co. Præcipe. Filed August 30th, 1900. F. W. Marsh, clerk. John C. Avery, attorney for plaintiff.

Whereupon, on the same day, to wit: on the thirtieth day of August, A. D. 1900, there issued out of the clerk's office of the said court a *summons ad respondendum*, directed to the marshal of the said district, which was thereupon delivered to him, and by him executed and returned into the said clerk's office with his return indorsed thereon, which writ is in the words and figures following, to-wit:

United States Circuit Court, Fifth Circuit, Northern District of Florida.

The President of the United States to the marshal of the northern district of Florida, Greeting:

You are hereby commanded to summon the Louisville & Nashville Railroad Company, a citizen of the State of Kentucky, a corporation organized and constituted by that name by the laws of the State of Kentucky, if it be found in your district, to be and appear before the circuit court of the United States, fifth circuit and northern district of Florida, at the rule day of said court, to be held at the clerk's office, in the city of Pensacola, on the first Monday of October next to answer unto the West Coast Naval Stores Company, a citizen of the State of Florida, and incorporated by the laws of said State, and having its principal place of business therein, in

said court, on a plea of damages, wherein the plaintiff claims damages to the amount of twenty-five thousand ($25,000.00) dollars, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 30th day of August, A. D. 1900.

[SEAL.] F. W. MARSH, *Clerk.*

JOHN C. AVERY,
Plaintiff's Attorney.

3 (Indorsed:) No. 66. United States circuit court, northern district of Florida. The West Coast Naval Stores Co. *vs.* Louisville & Nashville Railroad Co. Summons. Issued August 30, 1900. Returnable October 1st, 1900. John C. Avery, plaintiff's attorney.

Marshal's Return.

UNITED STATES OF AMERICA, }
Northern District of Florida, } *ss:*

I hereby certify that I served the annexed summons on the therein named defendants (the president, vice-president, general manager, chairman of the board of directors, nor any of the directors could not be found, they being non-residents of the district), by handing to and leaving a true and correct copy thereof with E. O. Saltmarsh, division superintendent of the defendant, personally at Pensacola, Fla., in said district, on the thirtieth day of August, A. D. 1900.

T. F. McGOURIN,
U. S. Marshal.

Filed September 12th, 1900.

F. W. MARSH, *Clerk.*

And thereafter, to-wit, on the same day, October 1st, 1900, the following declaration was filed in the said cause by the plaintiff, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola.

The West Coast Naval Stores Company, a corporation under the laws, and a citizen, of the State of Florida, the plaintiff, by its attorney, John C. Avery, sues The Louisville & Nashville Railroad Company, a corporation under the laws, and a citizen, of the State of Kentucky, the defendant.

For that, to-wit: before the institution of this suit, the defendant was, in the county and State aforesaid, a common carrier of goods, wares and merchandise for hire; by means of its cars drawn by locomotives over defendant's railways, and the plaintiff was then and there engaged in buying and selling, and shipping from Pensacola and other points in said county, naval stores, consisting of turpentine and rosin, in barrels, which plaintiff conveyed to and from its yard, in said county, and warehouse in the city of Pensacola, by means of defendant's cars and locomotives, over defendant's railway, including a switch, constructed by defendants for plaintiff from defendant's main line running into the city of Pensacola, to and into plaintiff's said yard; and the plaintiff in fact avers that the course of business dealing between plaintiff and defendant, then and there, was for plaintiff to transport over said switch and
4 defendant's railway, into the city of Pensacola, by means of defendant's cars and locomotives, plaintiff's turpentine and rosin to and upon defendant's wharf extending into the bay of Pensacola, which wharf was and is conducted by defendant and used by persons bringing goods over defendant's railway to and into Pensacola, to be shipped from said wharf, and at and upon said wharf to deliver plaintiff's turpentine and rosin to vessels, to be in and by such vessels carried to other ports in the prosecution of plaintiff's business, of which the defendant had notice; and it was the duty of the defendant, as common carrier, as aforesaid, and in the conduct of the wharf, as aforesaid, for a reasonable compensation, which plaintiff was always ready and willing to pay defendant, to give to the plaintiff the facilities aforesaid; and plaintiff further in fact avers that all of the service in fact rendered, as aforesaid, to it by the defendant, was for hire, by the plaintiff to the defendant, paid as and when required; and it was the purpose and intention of the plaintiff thereafter to continue to prosecute its business aforesaid, of which defendant had notice, and in the prosecution thereof to *to* continue to use the facilities aforesaid as defendant well knew paying therefor reasonable and customary hire; and plaintiff had the means and ability, and had made necessary arrangements, for the further prosecution of such business, as the defendant well knew; and the plaintiff further in fact avers that, in the midst of the prosecution of its said business, which, as plaintiff avers, was a large and lucrative business, the defendant notified plaintiff that it would not carry plaintiff's turpentine and rosin, of which plaintiff then and there had on hand a large and valuable stock, as defendant well knew, and to which it was constantly adding, as defendant well knew, and from thence hitherto has continued to add in the prosecution of its said business, and that it, the said defendant, would refuse, and did refuse, to transport, and from thence hitherto it has continued to refuse, to transport plaintiff's turpentine and rosin over its said railway to its said wharf, to be there loaded on certain vessels, with the managers of which plaintiff had contracted for the taking thereof from Pensacola to other ports, to which plaintiff in-

tended to ship the same, of which defendant had notice, or to permit the plaintiff to deliver its said turpentine and rosin at said wharf to said vessels, or to permit said wharf or said railway of defendant to be used in the prosecution of plaintiff's business in so far as the same should involve the use of the said vessels in the shipment of plaintiff's said turpentine and rosin from Pensacola; by means whereof plaintiff sustained great loss and damage, to-wit: five thousand dollars ($5,000.00) for the difference between what it would have cost the plaintiff to carry the same to and load it upon the said vessels by means of defendant's railway and wharf, and what it cost to do so by other means of conveyance and delivery; and in the sum of ten thousand dollars ($10,000.00) for what it will cost plaintiff hereafter to make delivery to said vessels in excess of what it would cost to make such delivery by means of defendant's said railway and wharf; and in the sum of ten thousand dollars ($10,000.00) on account of delays, annoyances and embarrassments, resulting from being compelled to carry on its business by transporting its goods in carts drawn by mules and horses for miles by sand roads and streets, and then shipping the same out to said vessels by means of lighters, and the necessary and inevitable general immediate injury to the business of plaintiff by having to carry on its business by such rude and primitive methods side by side with modern modes and facilities, thereby losing prestige in the business community, and being forced to compete with others who have and enjoy unrestricted and unlimited use of defendant's railway and wharf facilities, as aforesaid; and plaintiff is otherwise, by reason of the actings and doings of the defendants aforesaid, greatly damaged in its business.

And plaintiff claims damages in the sum of twenty-five thousand dollars ($25,000.00), and therefore it sues, &c.

JOHN C. AVERY,
Attorney for Plaintiff.

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Declaration. Filed October 1st, 1900. F. W. Marsh, clerk. John C. Avery, att'y for pl't'ff.

And thereafter, on the fourth day of March, 1901, the plaintiff, by its attorney, came into court, and filed therein an additional count to its declaration heretofore filed in the said cause, which is in the words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Florida, at Pensacola.

THE WEST COAST NAVAL STORES COMPANY
vs.
LOUISVILLE & NASHVILLE RAILROAD CO.

Plaintiff amends its declaration by adding thereto the following count:

6 2. For that, to-wit: before the institution of this suit, the defendant was, in the county of Escambia and State of Florida, a common carrier of goods, wares and merchandise, for hire, by means of its cars drawn by locomotives over defendant's railway; and the plaintiff was then and there engaged is buying and selling and shipping from Pensacola and other points in said county, naval stores consisting of turpentine and rosin in barrels, which plaintiff conveyed to and from its yard, in said county, and warehouse, in the city of Pensacola, by means of defendant's cars and locomotives over defendant's railway, including a switch constructed by defendant for plaintiff from defendant's main line, running into the city of Pensacola, to and into the said yard; and the plaintiff in fact avers that the course of business dealing between plaintiff and defendant then and there was for plaintiff to transfer over said switch and defendant's railway, into the city of Pensacola, by means of defendant's cars and locomotives, plaintiff's turpentine and rosin to and upon defendant's wharf, extending into the bay of Pensacola, which wharf was and is conducted by defendant and used by persons bringing goods over defendant's railway to and into Pensacola, to be shipped from said wharf, and at and upon said wharf to deliver plaintiff's turpentine and rosin to vessels, to be in and by such vessels carried to other ports in the prosecution of plaintiff's business, of which defendant had notice; and it was the duty of the defendant, as common carrier, as aforesaid, and in the conduct of the wharf, as aforesaid, which was and is a public wharf, for a reasonable compensation, which plaintiff was always ready and willing to pay to defendant, to give to the plaintiff the facilities aforesaid; and plaintiff further in fact avers that all of the services in fact rendered as aforesaid to it by the defendant was for hire by the plaintiff to the defendant paid as and when required, and it was the purpose and intention of the plaintiff thereafter to continue to prosecute its business aforesaid, of which defendant had notice, and in the prosecution thereof to continue to use the facilities aforesaid, as defendant well knew, paying therefor reasonable and customary hire; and plaintiff had the means and ability, and had made necessary arrangements, for the further prosecution of such business, as the defendant well knew; and the plaintiff in fact avers that in the midst of the prosecution of its said business, which, as plaintiff avers, was a large and lucra-

tive business, the defendant notified plaintiff that it would refuse to permit plaintiff's turpentine and rosin, of which plaintiff then and there had on hand a large and valuable stock, as defendant well knew, and to which plaintiff was constantly add-
7 ing, as defendant well knew, and from thence hitherto has continued to add in the prosecution of its said business, to be at, from or by means of defendant's said wharf loaded upon or delivered to certain vessels, with the managers of which plaintiff had contracted for the taking thereof from Pensacola to other ports to which plaintiff intended and had made arrangements to ship the same, of which defendant had notice; or to permit the said wharf and said railway of defendant to be used in the prosecution of plaintiff's business aforesaid, in so far as the prosecution thereof should involve the use of said vessels in shipment of plaintiff's said turpentine and rosin from Pensacola, by means whereof plaintiff sustained great loss and damage, to-wit: five thousand dollars ($5,000.00), for the difference between what it would have cost plaintiff to carry the same to and load it upon the said vessel by means of defendant's railway and wharf, and what it cost to do so by other means of conveyance and delivery; and in a sum of ten thousand dollars ($10,000.00) for what it will cost plaintiff hereafter to make delivery to said vessels in excess of what it would cost to make such delivery by means of defendant's said railway and wharf; and in the sum of ten thousand dollars ($10,000.00), on account of delays, annoyances and embarrassments resulting from the plaintiff being compelled to carry on its business by transporting its goods in carts drawn by mules and horses for miles by sand roads and streets, and then shipping the same out to said vessels by means of lighters, and the necessary and inevitable general immediate injury to the business of plaintiff by plaintiff having to carry on its business by such rude and primitive methods side by side with modern modes and facilities, thereby losing prestige in the business community and being forced to compete with others who have and enjoy unrestricted use of defendant's railway and wharf facilities, as aforesaid and plaintiff is otherwise, by the actings and doings of defendant aforesaid, greatly damaged in its business.

JNO. C. AVERY,
Attorney for Plaintiff.

(Indorsed:) West Coast Naval Stores Co. *vs.* L. & N. R. R. Co. Additional count. Copy received this 2nd day of March, A. D. 1901. W. A. Blount, att'y for def't. Filed March 4th, 1901. F. W. Marsh, clerk. Jno. C. Avery, att'y for pl't'ff.

8 To these counts the defendant filed several pleas, among them a plea numbered three. The plaintiff demurred to the said plea three; the court overruled the demurrer, and final judgment was entered against the plaintiff, whereupon it sued out a writ of error to the circuit court of appeals of the fifth judicial circuit of

the United States, at New Orleans, and it was, upon consideration by said court, ordered that the judgment of the said circuit court be reversed and the cause remanded with instructions to sustain the demurrer of the plaintiff to the third plea filed by the defendant, and otherwise to proceed according to law as evidenced by the mandate of the said circuit court of appeals filed in the said circuit court on April 30, A. D. 1903. In accordance with said mandate an order was entered sustaining the demurrer to the said plea three and giving leave to the parties to amend as they might be advised.

Said third plea is as follows:

3. That the defendant has adequate depots and yards in the city of Pensacola for the receipt and delivery of all merchandise committed to it for transportation to and delivery at Pensacola. That neither its charter, nor any statutary law has compelled or required, or compels or requires, it to construct or maintain the wharf mentioned in the declaration, but that it constructed the same at an expense to it of tens of thousand- of dollars, for the purpose of providing facilities for the transaction of such business as it might desire with such vessels as it might permit to come to and lie at said wharf to take cargo. That in accordance with such purpose, it made and promulgated, upon the construction of said wharf, and more than five years prior to the bringing of this suit, rules and regulations, by which it limited the use of its wharves, including the wharf mentioned in the declaration, "to traffic handled by vessels in regular lines running in connection with the Louisville & Nashville railroad, and vessels belonging to or consigned to Gulf Transit Company" (an agency of defendant), and making the use of said wharves "for traffic in connection with vessels other than herein referred to," "subject to special arrangement." The said rules and regulations were in operation and enforced by defendant from the time of their promulgation, as aforesaid, up to and at the time of the refusal of the defendant to permit the naval stores of the plaintiff to be loaded from its wharf into the "certain vessels" mentioned in the declaration, and still are in force and operation. That the said "certain vessels" were not regular
9 lines running in connection with the Louisville & Nashville railroad, nor were they belonging to or consigned to Gulf Transit Company, nor had they made any special arrangements with the defendant for the use of the said wharf, but that said vessels constituted an independent line between New York and Pensacola, and New York and Mobile, Alabama, carrying merchandise between the said points, and would have come in competition with a line of steamers with which the defendant was then negotiating for regular service in the transportation of merchandise to and from New York and Pensacola in connection and under traffic arrangements with defendant, and such service has since been established, and a line of steamers is now regularly transporting merchandise between said points in such connection, and under such traffic arrangements; and was also in competition with the defendant

itself, which was, at said time and had been for a long time prior thereto, engaged in a like business between said points, carrying goods by its line of railroad from Pensacola and Mobile to River Junction, Florida, Cincinnati, Ohio, and Montgomery, Alabama, and there delivering the same to a connecting carrier and other carriers connecting therewith, transporting goods to the city of New York, and receiving from said connecting carriers at the points aforesaid, and transporting to Pensacola and Mobile goods shipped from New York to Pensacola and Mobile. That the defendant has not either notified plaintiff that it would not carry plaintiff's naval stores, nor refused to transport plaintiff's naval stores over its railway mentioned in the declaration, to and on its wharf also mentioned in the declaration; that it has at all times so transported them when requested so to do by the plaintiff. That the defendant has refused to permit the certain vessels mentioned in the declaration to take goods and merchandise from its said wharf to be transported by them to the port of New York, as aforesaid, but that such refusal was solely because the said vessels were not of either of the classes provided for by the rules aforesaid, nor had made special arrangements with the defendant, and would have been, as aforesaid, in competition with the lines of vessels connecting with the defendant running to and from New York, and was, as aforesaid, in competition with the defendant itself, in its rail transportation aforesaid, to and from New York city, and that the defendant was then, and at all times, had been, ready and willing to give, and did give, to the plaintiff, the same facilities for shipping naval stores to New York or any other port, over defendant's said wharf, as it gave to any and all other shippers.

BLOUNT & BLOUNT,
Attorneys for Defendant.

E. O. Saltmarsh, being duly sworn, says that he is agent of the defendant, and that the foregoing pleas are true.

E. O. SALTMARSH.

Sworn to and subscribed before me, this 14th day of March, A. D. 1902.

F. B. BONIFAY,
[SEAL.] *Notary Public.*

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Pleas. Filed March 14th, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla.

Indorsed: West Coast Naval Stores Co. *vs.* L. & N. Railroad Co. Amendment of declaration. Filed November 3rd, 1903. F. W. Marsh, clerk. J. C. Avery, att'y for pl'ff.

And on the same day, to-wit: on the 3rd day of November, A. D. 1903, the defendant herein, by its attorney, came into court and filed the following pleas in the said cause, to-wit:

In the United States Circuit Court, Northern District of Florida.

WEST COAST NAVAL STORES Co.
vs.
LOUISVILLE & NASHVILLE RAILROAD Co.

The defendant, withdrawing all former pleas, pleads to the first and second counts of the declaration as follows:

1. That, the defendant has adequate depots and yards in the city of Pensacola for the receipt and delivery of all merchandise committed to it for transportation to, and delivery at, Pensacola. That neither its charter, nor any statutory law has compelled or required, or compels or requires it to construct or maintain the wharf mentioned in the declaration, but that it constructed the same at an expense to it of tens of thousands of dollars, for the purpose of providing facilities for the transaction of its business with such vessels as it might permit to come to and lie at said wharf to take cargo.

That no business has ever been done at said wharf except the
11 transportation by the defendant in cars on its railroad over said wharf to and from vessels lying at the said wharf, of goods brought, or to be transported, by said vessels and the loading and unloading thereat of such vessels. That in accordance with such purpose, it made and promulgated, upon the construction of said wharf, and more than five years prior to the bringing of this suit, rules and regulations, by which it limited the use of its wharves, including the wharf mentioned in the declaration, "to traffic handled by vessels in regular lines running in connection with the Louisville & Nashville railroad, and vessels belonging to, or consigned to, Gulf Transit Company" (an agency of defendant,) and making the use of said wharves "for traffic in connection with vessels other than herein referred to," "subject to special arrangement." The said rules and regulations were in operation and enforced by defendant from the time of their promulgation, as aforesaid, up to, and at the time of, the refusal of the defendant to permit the naval stores of the plaintiff to be loaded from its wharf into the "certain vessels" mentioned in the declaration, and still are in force and operation. That the said "certain vessels" were not regular lines running in connection with the Louisville & Nashville railroad, nor were they belonging to, or consigned to, Gulf Transit Company, nor had they made any special arrangements with the defendant for the use of the said wharf, but that said vessels constituted an independent line between New York and Pensacola, and New York and Mobile, Alabama, carrying merchandise between the said points, and would have come in competition with a line of steamers with which the defendant was then negotiating for regular service in the transportation of merchandise to and from New York and Pensacola in connection, and under traffic arrangements, with defendant, and such service has since been estab-

lished, and a line of steamers is now regularly transporting merchandise between said points in such connection, and under such traffic arrangements; and was also in competition with the defendant itself, which was, at said time, and had been for a long time prior thereto, engaged in a like business between said points, carrying goods by its line of railroad from Pensacola and Mobile to River Junction, Florida, Cincinnati, Ohio, and Montgomery, Alabama, and there delivering the same to a connecting carrier and other carriers connecting therewith, transporting goods to the city of New York, and receiving from said connecting carriers at the points aforesaid, and transporting to Pensacola and Mobile, goods shipped from New York to Pensacola and Mobile.

12 That the defendant has not either notified plaintiff that it would not carry plaintiff's naval stores, nor refused to transport plaintiff's naval stores over its railway mentioned in the declaration, to and on its wharf also mentioned in the declaration; that it has at all times so transported them when requested so to do by the plaintiff. That the defendant has refused to permit the certain vessels mentioned in the declaration, to take goods and merchandise from its said wharf to be transported by them to the port of New York, as aforesaid, but that such refusal was solely because the said vessels were not of either of the classes provided for by the rules aforesaid, nor had made special arrangements with the defendant, and would have been, as aforesaid, in competition with the lines of vessels connecting with the defendant running to and from New York, and was, as aforesaid, in competition with the defendant, itself, in its rail transportation aforesaid, to and from New York city, and that the defendant was then, and at all times had been, ready and willing to give, and did give, to the plaintiff, the same facilities for shipping naval stores to New York or any other port, over defendant's said wharf, as it gave to any and all other shippers; that the unloading by the plaintiff of its said goods into said vessels necessarily involves the lying at, attachment to, and use of the said wharf, one of the terminals of the defendant, by the said vessels; that the said wharf was not at the time mentioned in the declaration, and has never been a public wharf, unless the facts set forth hereinbefore in this plea constituted it such.

W. A. BLOUNT,
Attorney for Defendant.

E. O. Saltmarsh being duly sworn, says that he is agent of the defendant, and that the foregoing pleas are true.

E. O. SALTMARSH.

Sworn to and subscribed before me this 3rd day of November, A. D. 1903.

W. W. WEEKLEY,
[SEAL.] *Notary Public.*

My commission expires Aug. 7th, 1907.

Endorsed: West Coast Naval Stores Co. *vs.* L. & N. R. R. Co. Pleas. Filed November 3rd, 1903. F. W. Marsh, clerk.

13 And on the same day, to-wit: on the third day of November, A. D. 1903, the plaintiff in the above entitled cause filed a demurrer to the foregoing plea of the defendant, which demurrer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola.

WEST COAST NAVAL STORES COMPANY, a Corporation, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation, Defendant.

The plaintiff demurs to defendant's plea last filed withdrawing all former pleas, and plead- to the first and second counts of the declaration, because the same is bad in substance, and for ground of demurrer says:

1. That the said plea, by its allegations, shows that it was the duty of the defendant to permit the plaintiff to load on said certain vessels plaintiff's turpentine and rosin mentioned in the declaration; and does not deny that the defendant refused to permit plaintiff so to do;

2. That the said plea, by its allegations, shows that the defendant has violated its duty to the plaintiff, as in the declaration alleged;

3. That the said plea, by its allegations, shows that the defendant, by the acts complained of in the declaration, has damaged plaintiff, as alleged;

4. That the said plea, by its allegations, shows that defendant's said wharf is a public wharf;

5. That the said plea, by its allegations, shows that the said certain vessels mentioned in the declaration would not have come in competition with the defendant;

6. That the said plea, by its allegations, shows that at the time of the commission of the said acts in the said declaration complained of, the said certain vessels in the declaration mentioned were not in competition with any line of steamers then engaged in the transportation of merchandise to and from New York and Pensacola in connection and under traffic arrangements with defendant;

7. That the said plea, by its allegations, fails to show that the said certain vessels in the declaration mentioned would, by receiving the plaintiff's said rosin and turpentine in the declaration mentioned, have injured the defendant, or any person or persons
14 then having or contemplating traffic arrangements with defendant;

8. That the said plea, by its allegations, fails to show that the

defendant had authority to establish a line of steamers between Pensacola and New York;

9. That the said plea, by its allegations, fails to show that the relations between the defendant and the said line of steamers, alleged to be now regularly transporting merchandise between Pensacola and New York, in connection with the defendant, is acting under such conditions and arrangements with defendant as render such line a part of the system of defendant in such manner as to make it legal for defendant to do and act in regard to plaintiff in such manner as in the declaration complained of;

10. That the said plea, by its allegations, fails to show that the said line of steamers mentioned in the plea is so situated and circumstanced in regard to defendant as to entitle defendant to set up the defense stated in said plea;

11. That the said plea, by its allegations, fails to show that the defendant is so situated and circumstanced in regard to the said line of steamers mentioned in the said plea, as to entitle the defendant to set up the defense stated in said plea;

12. That the said plea is otherwise insufficient and bad in substance.

JNO. C. AVERY,
Pl'ff's Att'ys.

11-3-'03.

I, John C. Avery, attorney for plaintiff in the above stated case, certify that in my opinion the foregoing demurrer is well founded in point of law.

JNO. C. AVERY,
Att'y for Pl'ff.

Personally before me appeared Jno. C. Avery, who, being sworn, says that he is attorney of The West Coast Naval Stores Company, the plaintiff, and that the foregoing demurrer is not interposed for the purpose of delay.

JNO. C. AVERY.

Sworn to and subscribed before me this — day of November, 1903.

——— ———,
Notary Public.

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville Railroad Co. Demurrer to plea. Filed November 3rd, 1903. F. W. Marsh, clerk. Avery & Avery, att'ys for pl'ff.

15 And thereafter, to-wit: on the fifth day of November, A. D. 1903, the court made and caused to be entered of record in the foregoing cause, the following order, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola.

WEST COAST NAVAL STORES COMPANY, a Corporation, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation, Defendant.

This case coming on to be heard on demurrer to defendant's plea last filed, after withdrawal of all other pleas, and the same having been argued by counsel for the respective parties and considered by the court:

It is ordered and adjudged, that the said demurrer be, and the same is, sustained, with leave to defendants to plead over within two (2) days.

Thus done and ordered at Pensacola, this 5th of November, A. D. 1903.

CHAS. SWAYNE, *Judge.*

(Indorsed:) West Coast Naval Stores Co. *vs.* L. & N. R. R. Co. Order sustaining demurrer to plea. Filed November 5th, 1903. F. W. Marsh, clerk.

And thereafter, to-wit on the 7th day of November, A. D. 1903, the plaintiff, by *his* attorney, came into court and filed with the clerk thereof, a præcipe for default against the defendant, which præcipe is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola.

WEST COAST NAVAL STORES COMPANY, a Corporation, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation, Defendant.

16 The clerk of said court will please enter default against defendant in the above stated case this day for want of plea.

JNO. C. AVERY,
Att'y for Pl'ff.

(Indorsed:) West Coast Naval Stores Co. *vs.* L. & N. R. R. Co. Præcipe for default. Filed November 7th, 1903. F. W. Marsh, clerk.

Whereupon, the clerk of said court entered on the 9th day of November, A. D. 1903, the following order, to-wit:

THE WEST COAST NAVAL STORES COMPANY
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

The defendant having been directed and required by the court on the fifth day of November, A. D. 1903, to file its plea or pleas, within two days from said date, and there being no pleas or demurrers now pending and undisposed of to the plaintiff's declaration, and the plaintiff by præcipe filed November 7th, 1903, claiming and directing a judgment by default against the said defendant, for lack of plea to the declaration:

It is, therefore, ordered and adjudged that the plaintiff have, and the same is hereby entered, a judgment by default in relation to matters and things in its declaration alleged, and that it do have the right to proceed further in the premises according to law and assess its damages aforesaid.

Done this 9th day of November, A. D. 1903.

F. W. MARSH, *Clerk.*

And thereafter, to-wit: on the 10th day of November, A. D. 1903, the following proceedings were had in open court, to-wit:

THE WEST COAST NAVAL STORES COMPANY, a Corporation,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation.
Law. No. 66.

Damages, $25,000.00.

17 This cause coming on to be heard upon the judgment by default heretofore entered herein, against the defendant, for lack of plea or other defense, and for the assessment of damages sustained by the plaintiff by reason of the acts and things alleged in its declaration:

Whereupon, by agreement and consent of counsel, came the following jury, to-wit: 1. John White, 2. Joseph Marquis, 3. Ed. W. Lawrence, 4. Chas. L. Mann, 5. D. Levy. 6. John E. Maxwell, 7. John A. Merritt, 8. Charles W. Merritt, 9. J. F. L. Quina, 10. F. E. Glackmeyer, 11. John J. Price, 12. John Pons, who being duly chosen, tried and sworn, and after hearing the evidence and upon admissions of counsel in the cause, returned the following verdict, to-wit: "We, the jury, assess the damages in this cause at the sum of one thousand dollars, Pensacola, Nov. 10, 1903. John A. Merritt, foreman."

Whereupon, it is considered, ordered and adjudged by the court, that the plaintiff, The West Coast Naval Stores Company, a corpo-

ration, do have and recover of and from the defendant, The Louisville & Nashville Railroad Company, a corporation, the sum of one thousand ($1,000.00) dollars, and the costs of this cause, taxed at the sum of $72.35, and that the plaintiff do have execution therefor.

And thereafter, to-wit: on the 18th day of November, A. D. 1903, came the said defendant, by its attorney, and filed in the office of the clerk of said court its petition for an appeal, which, together with the order made thereon, is in the words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Florida.

WEST COAST NAVAL STORES COMPANY, a Corporation of the State of Florida, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation of the State of Kentucky, Defendant.

To the honorable judges of the said court:

Now comes the said Louisville & Nashville Railroad Company, a corporation under the laws of the State of Kentucky, by its attorney, William A. Blount, and complains that in the record and pro-
18 ceedings, and also the rendition of the judgment in the suit between it, defendant, and The West Coast Naval Stores Company, plaintiff, wherein final judgment was rendered at Pensacola on the 10th day of November, A. D. 1903, manifest error has occurred and intervened, to the great damage of the said defendant.

Wherefore, the said defendant prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the circuit court of appeals of the United States for the fifth circuit.

W. A. BLOUNT,
Attorney for Defendant.

This writ is allowed and supersedeas bond fixed for the sum of two thousand dollars ($2,000.00).

CHAS. SWAYNE, *Judge.*

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Prayer for allowance of writ of error. Filed November 13th, 1903. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla.

And at the same time and on the same day, the said defendant, by its attorney, filed its assignment of error, which is in the words and figures following, to-wit:

In United States Circuit Court, Northern District of Florida, at Pensacola.

WEST COAST NAVAL STORES COMPANY, a Corporation of the State of Florida,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation of the State of Kentucky.

And now comes the said defendant, by its attorney, and says that in the record and proceedings aforesaid, there is a manifest error, to-wit:

1. The court erred in sustaining the demurrer of the plaintiff to the plea of the defendant to the first and second counts of the declaration.

19 Wherefore, the defendant, The Louisville & Nashville Railroad Company, prays that the judgment aforesaid may be reversed.

W. A. BLOUNT,
Attorney for Defendant.

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Assignment of error. Filed November 13th, 1903. F. W. Marsh, clerk.

And at the same time and on the same day, came the defendant, The Louisville & Nashville R. R. Co., by its attorney, and filed and caused to be approved the following bond and undertaking, which is in the words and figures following, to-wit:

Know all men by these presents: That we, the Louisville & Nashville Railroad Co., a corporation, and F. C. Brent and W. H. Knowles, are held and firmly bound unto the West Coast Naval Stores Company, a corporation, in the sum of two thousand dollars ($2,000.00), for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators forever, jointly and severally, firmly by these presents.

Signed and sealed with our seals and dated this 15th day of November, A. D. 1903.

Whereas, lately at a session of the circuit court of the United States for the northern district of Florida, held at Pensacola, on the 10th day of November, 1903, in a suit depending in the said court between West Coast Naval Stores Company, a corporation, plaintiff, and The Louisville & Nashville Railroad Company, a corporation, defendant, and the said Louisville and Nashville Railroad Company, a corporation, being about to obtain a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said West Coast Naval Stores Company, citing and admonishing it

to be and appear before the United States circuit court of appeals for the fifth circuit to be holden at New Orleans within thirty (30) days from the date thereof.

Now, the condition of the above obligation is such that, if the said Louisville & Nashville Railroad Company, a corporation, shall prosecute its writ to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void, else to remain in full force and virtue.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By E. O. SALTMARSH, *Supt.*

[Louisville & Nashville R. R. Co., Corporate Seal.]

F. C. BRENT. [SEAL.]
WM. H. KNOWLES. [SEAL.]

Personally before me came F. C. Brent and W. H. Knowles, who being sworn says each for himself that he is worth in visible property in the State of Florida more than $2,000.00 in excess of legal exemptions.

F. C. BRENT.
WM. H. KNOWLES.

Sworn to and subscribed before me this 11th day of November, 1903.

W. N. ROBERTS,
[SEAL.] *Notary Public.*

My commission expires Oct. 6, 1907.

The foregoing bond is approved and accepted for writ of error and supersedeas.

——— ———, *Judge.*

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Bond. Taken and approved this 13th day of November, 1903. Chas. Swayne, judge. Filed November 13th, 1903. F. W. Marsh, clerk.

And thereupon, and on the same day, to wit: on the 13th day of November, A. D. 1903, in pursuance of the said appeal, there issued out of said court a citation, which, together with the service made thereon, is in the words and figures following, to-wit:

The President of the United States to the West Coast Naval Stores Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, on the ninth day of December, A. D. 1903,

pursuant to a writ of error sued out and filed in the clerk's office of the circuit court of the United States for the northern district of Florida, at Pensacola, in a cause wherein The West
21 Coast Naval Stores Company is plaintiff, and The Louisville & Nashville Railroad Company, a corporation, is defendant, to show cause, if any there be, why the judgment rendered against the said Louisville & Nashville Railroad Company, a corporation, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of December, in the year of our Lord, one thousand, nine hundred and three.

CHAS. SWAYNE, *Judge.*

(Indorsed:) West Coast Naval Stores Co. *vs.* Louisville & Nashville R. R. Co. Citation. Filed November 13th, 1903. F. W. Marsh, clerk.

Return on Service of Writ.

UNITED STATES OF AMERICA, *Northern District of Florida,* } *ss:*

I hereby certify and return that I served the annexed citation on the therein-named West Coast Naval Stores Co., by handing to and leaving a true and correct copy thereof with Avery & Avery, attorneys of record for the above named corporation, personally at Pensacola, Fla., in said district on the 14th day of Nov., A. D., 1903.

T. F. McGOURIN,
U. S. Marshal,
By H. WOLF,
CH. O., *Deputy.*

And at the same time, and on the same day, there issued out of the circuit court of the United States, bearing the signature and tested by the clerk of the circuit court of the United States for the northern district of Florida, the following writ of error, the original thereof being hereto annexed, and returned herewith, which, together with the return indorsed thereon is hereto attached, to wit

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendi-
22 tion of the judgment of a plea which is in the said circuit court, before you, or some of you, between The West Coast

Naval Stores Company, a corporation, plaintiff, and The Louisville & Nashville Railroad Company, a corporation, defendant, manifest error has happened to the great damage of said plaintiff, The West Coast Naval Stores Company, a corporation, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be thereing given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the fifth circuit, together with this writ, so that you have the same at New Orleans, Louisiana, on the ninth day of December, A. D. 1903, in the United States circuit court of appeals, to be then and there held, and the records and proceedings aforesaid being inspected, the said United States circuit court of appeals may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of November, in the year of our Lord, one thousand, nine hundred and three.

[SEAL.] F. W. MARSH,
Clerk of the Circuit Court of the United States for the Northern District of Florida.

(Indorsed:) Louisville & Nashville Railroad Company, pl't'ff in error, *vs.* West Coast Naval Stores Co., def. in error. Writ of error.

The within writ of error served this November 13th, 1903, by lodging and filing a copy for the defendant in the clerk's office of the circuit court of the United States for the northern district of Florida, at Pensacola, Florida.

Witness my hand and seal of office this November 13th, 1903.

[SEAL.] F. W. MARSH, *Clerk.*

23 In the United States Circuit Court of Appeals, Fifth Circuit.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation, Plaintiff in Error,
vs.
WEST COAST NAVAL STORES COMPANY, a Corporation, Defendant in Error.

Error to the circuit court of the United States for the northern district of Florida.

The undersigned attorneys for the plaintiff in error and defendant in error agree that there shall be omitted from the record upon

the transcript for the circuit court of appeals in this cause, all the papers and other proceedings therein except the following, to-wit:

1. The præcipe for summons;
2. The summons and return;
3. The declaration;
4. The second count of the declaration;
5. A statement as follows:

"To these counts the defendant filed several pleas, among them a plea numbered three. The plaintiff demurred to the said plea three, the court overruled the demurrer, and final judgment was entered against the plaintiff, whereupon it sued out a writ of error to the circuit court of appeals of the fifth judicial circuit of the United States, at New Orleans, and it was, upon consideration by said court, ordered that the judgment of the said circuit court be reversed and the cause remanded with instructions to sustain the demurrer of the plaintiff to the third plea filed by the defendant, and otherwise to proceed according to law as evidence by the mandate of the said circuit court of appeals filed in the said circuit court on April 30, A. D. 1903. In accordance with said mandate an order was entered sustaining the demurrer to the said plea three, and giving leave to the parties to amend as they might be advised."

Said 3rd plea is as follows:

5½. The third plea of defendant filed March 14, 1902.

6. The plea of the defendant filed November 3, 1903;

24 7. The demurrer of the defendant thereto, filed November 3, 1903;

8. The order of the court sustaining the said demurrer;
9. The præcipe for default;
10. The entry of default;
11. The assessment of damages and verdict of the jury, and judgment;
12. The petition and allowance of appeal;
13. Assignment of errors;
14. Bond for plaintiff in error;
15. Citation;
16. Service and return of citation;
17. Writ of error;
18. Certificate;

W. A. BLOUNT,
Att'y for Plaintiff in Error.
JNO. C. AVERY,
Att'y for Defendant in Error.

Filed December 8th, 1903.

F. W. MARSH, *Clerk.*

Clerk's Certificate.

United States of America, Northern District of Florida.

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida in the fifth judicial circuit, by virtue of the attached writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from one to thirty, inclusive, contain a true and complete transcript of the record and proceedings had in the circuit court of the United States aforesaid, in a cause of West Coast Naval Stores Company against The Louisville & Nashville Railroad Company, and wherein The Louisville & Nashville Railroad Company is plaintiff in error and The West Coast Naval Stores Company is defendant in error, as the same remains of record and on file in said court.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, at the city of Pensacola, in the district aforesaid, this 21st day of November, A. D. 1903.

[SEAL.] F. W. MARSH, *Clerk.*

25 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 24 pages, numbered from 1 to 24, inclusive, contain a true copy of the record and proceedings as filed in this court from the circuit court of the United States for the northern district of Florida, in the case of The Louisville & Nashville Railroad Co., *versus* The West Coast Naval Stores Company, No. 1323, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 8th day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals
for the Fifth Circuit.

26 U. S. Circuit Court of Appeals. Filed Mar. 29, 1904. Charles H. Lednum, clerk.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1903.

LOUISVILLE & NASHVILLE RAILROAD CO.
v.
WEST COAST NAVAL STORES COMPANY. } No. 1323.

Error to the circuit court of the United States for the northern district of Florida.

Before Pardee, McCormick, and Shelby, circuit judges.

By the COURT: The questions involved on this writ of error were fully decided when this case was first before the court; see West Coast Naval Stores Company *v.* Louisville & Nashville R. Co., 121 F. R. 645; and as we adhere to the views therein expressed, the judgment of the circuit court is affirmed.

27 THE LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
THE WEST COAST NAVAL STORES CO. } No. 1323.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiff in error, Louisville & Nashville Railroad Company, and the sureties on the writ of error bond herein, F. C. Brent and Wm. H. Knowles, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

March 29, 1904.

28 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing one page numbered *from* — *to* —, *inclusive*, contain- a true copy of the opinion of the court and the final judgment, in the case of Louisville & Nashville Railroad Co. *versus* West Coast Naval Stores Company, No. 1323, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 30th day of March, A. D. 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

29 [Endorsed:] Louisville & Nashville Railroad Company *vs.* West Coast Naval Stores Company. No. 1323. Certified copy of proceedings and judgment in the circuit court of appeals for the fifth judicial circuit.

30 In the Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff in Error, *vs.* WEST COAST NAVAL STORES COMPANY, Defendant in Error.	No. 649, October Term, 1903.

We the undersigned attorneys, respectively for the plaintiff in error and the defendant in error, do hereby agree that the transcript of record in this cause in the Supreme Court of the United States, used upon the application for the writ of certiorari, shall be taken as a return to the writ of certiorari granted herein on the 25th day of April, A. D., 1904.

(Signed) W. A. BLOUNT &
A. C. BLOUNT, JR.,
Attorneys for Plaintiff in Error.
JNO. C. AVERY,
Attorney for Defendant in Error.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the above and foregoing is a full, true, perfect and complete copy of a certain stipulation filed by the parties in relation to the return upon the writ of certiorari issued by the Supreme Court of the United States in the case of The Louisville & Nashville Railroad Company *vs.* West Coast Naval Stores Company, as fully as the same remains on file and of record in my office.

Witness my hand and seal of office, at New Orleans, Louisiana, on this the 7th day of May, A. D., 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

31 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Louisville & Nashville Railroad Company is plaintiff in error and The West Coast Naval Stores Company is defendant in error which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and

32 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

33 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of said court do hereby certify that I received the within writ on the 7th day of May, A. D., 1904,

And whereas the attorneys for the parties therein named have, by a stipulation in writing filed, in my office on this day, agreed that the transcript of record in this cause in the Supreme Court of the United States used upon the application for the writ of certiorari shall be taken as a return to the writ of certiorari granted herein on the 25th day of April, A. D., 1904,

Therefore, in compliance with said writ, and by direction of the judges of this court, I have made and attach hereto, a certified copy of said stipulation as a return to the within writ.

Witness my official signature and the seal of said office at New Orleans, Louisiana, this 7th day of May, A. D., 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the U. S. Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] File No. 19,300. Supreme Court of the United States. No. 225, October term, 1904. The Louisville & Nashville Railroad Co. *vs.* The West Coast Naval Stores Company. Writ of certiorari and return. Filed May 9, 1904.